

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:18.02.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.S.A.No.33 of 2006

P.Jayabarathi

... Appellant

.Vs.

Usha Nandhini

...Respondent

PRAYER: Civil Miscellaneous Second Appeal filed under Section 100 of CPC, to set aside the judgment in CMA No.2 of 2006 dated 14.10.2006 on the file of the learned Additional District Judge (Fast Track Court No.III), Virudhachalam and confirm the judgment and decree of the Principal Subordinate Court, Virudhachalam, in H.M.O.P. No.58 of 2002 on the file of the Principal Subordinate court, Cuddalore.

For Appellant : Mr.D.Bharatha Chakravarthy

For Respondent : Mr.V.Raghavachari

JUDGMENT

The present Civil Miscellaneous Second Appeal has been filed by the appellant/husband challenging the judgment dated 14.10.2006 made in CMA No.2 of 2006 by the Additional District Court/Fast Track Court No.II, Cuddalore, reversing the judgment and decree dated 05.07.2004 passed in H.M.O.P. No.58 of 2002 on the file of the Principal Subordinate court, Virudhachalam.

2. The case of the appellant herein is that his permanent residence is at T.Agaram Colony, Tittagudi Taluk, Cuddalore District and he is doing agricultural works. He completed his studies upto SSLC in Government Boys Higher Secondary School, his father is a teacher and his mother is a house wife. He is the only son to his parents. His father is endowed with considerable properties, both movable and immovable. While so, with a view to grab the properties from his father, one Subramaniam of T.Agaram, who served as Sub Inspector of Police at Pennadum and various places, now retired, whose sister Janaki Rajendiran is an Advocate of Thittakudi along with Chinnakutty @ Rajakumari, Udhayakumar and Dinesh Kumar conspired and used the respondent viz., Selvi.Usha Nandhini, T.Agaram Colony, Pennadum post, Tittagudi Taluk, Cuddalore District, as a tool in their hands, fabricated a false and concocted complaint dated 04.12.2001 for the offences under Sections 417 and 376 of IPC.

3. The petitioner was arrested and he was in judicial custody as per Crime No.306 of 2002. The appellant was also confined to the police station and he was forced to marry the said Usha Nandhini, on the false complaint that he was having

sexual intercourse with her either in the sugarcane field or anywhere at any time muchless two months prior to 04.12.2001.

4. It is the case of the husband that on 08.05.2002 at 01.30 p.m., marriage was solemnized between him and the respondent in the police station itself under coercion and that he had tied Thali forcibly without her consent.

5. The petitioner's parent solemnized the marriage of the petitioner with one Sasikala, daughter of N.Govindasamy, according to Hindu Caste Custom and the same was also registered under the Hindu Marriage Act, before the Marriage registrar, Cuddalore on 26.04.2002 in marriage serial No.162/2002. The marriage is valid and subsisting. The petitioner and his father were threatened at Pennadum Police Station and the Police Personnel of Pennadum Police Station forced for the marriage with Usha Nandhini and the police by force brought the marriage Register of Piralayakaaleshwaran Temple of Pennadum and the Pennadum Police forced the petitioner and his father to put their respective signatures in the above said marriage Registered on 08.05.2002 at about 01.30 p.m., as if a marriage had been solemnized between the petitioner and the respondent and forced the petitioner to give a pose for photograph as if the petitioner tied thali to the respondent. As a matter of fact, the petitioner was wearing only a lungi and photographs were taken screening the lungi worn by the petitioner. The above marriage between the petitioner and the respondent on 08.05.2002 in force and bogus and it was only a drama made to enact by force by the Pennadum Police Personnel by sheer exercise of abuse of police power and authority outside the temple. It is null and void.

6. Therefore, the forced marriage by abuse of police powers on 08.05.2002 between the petitioner and the respondent at Pennadum Police Station is null and void under Section 11 of the Hindu Marriage Act 1955, as it contravenes Section 5(1) of the above Act, since the wife of the petitioner by name Sasikala was living and their marriage is subsisting as on 08.05.2002. Because some records were created by misuse and abuse of police powers as if a marriage had taken place between the petitioner and the respondent on 08.05.2002, the petitioner is constrained to file this petition before this Court for a decree of declaration that the marriage forced on 08.05.2002 between the petitioner and the respondent is null and void.

7. Hence, the appellant moved a divorce petition in HMOP.No.58 of 2002 before the Subordinate Judge, Virudhachalam, against the respondent seeking to declare the forced marriage between the appellant and the respondent alleged to be held on 08.05.2002 at Pennadum as null and void and the said HMOP was allowed by the said Judge on 05.07.2004. Aggrieved over the same, the appellant herein preferred in CMA.No.2 of 2006 before the Additional District Judge (Fast

Track Court-III), its order dated 14.10.2006 holding that the appellant herein has not proved the marriage between himself and one sasikala on 08.05.2002 and also he has not proved that the marriage between himself and respondent is only coercion, thereby, the order passed in HMOP.No.58 of 2002 by the trial Court was set aside.

8. Aggrieved over the order passed by the lower appellate Court, the present Civil Miscellaneous Appeal has been preferred by the appellant on the ground that the first appellate Court has erred in not relying upon Ex.P4-Marriage registration certificate, which is marked through the appellant and not through the Officials or Register of Marriage. The appellant is a party to Ex.P4 and he can very well mark the same. The genuineness of Ex.P4 is not disputed. Further, the first appellate Court has come to a wrong conclusion holding that the appellant has not produced any document to show that the marriage took place on 08.05.2002 under threat and coercion and without perusing Ex.P5 and P7.

9. The appellant was arrested and in duress for more than 40 days and thereafter the alleged marriage took place without the consent of the appellant and his parents, that too, between 12.00 noon 01.30 p.m., during Ragukhalam on 08.05.2002 without the presence of important relatives or friends. The alleged marriage took place without any photograph, video graph or invitation would itself go to show that the same was performed out of coercion. The first appellate Court failed to see that the RW.3 is totally unconnected person and is not a relative of any of the parties. He is a witness to the document as Ex.P1. The trial Court rightly pointed out that the deposition of RW.3 is totally false. The first appellate Court failed to see the deposition of RW.2, who is the Archagar of the temple, who conducted the alleged marriage and he did not know the writer of Ex.P1 and he did not know the fees amount and he did not enquire the parties about the earlier marriage and which has to be endorsed by Village Maniakkarar and also he was not permanent archagar of the temple. The first appellate Court ought to have seen that as per the version of RW.1, the alleged marriage was an arranged one by both the families. But none of the relatives attended and the photograph and video graph etc., were not taken. Originally, the marriage took place in the police station in an hasty and hurried manner that too in the Raghukalam on 08.05.2002. The first appellate Court, without looking into the documents and evidence of the appellant and without properly understanding the entire scope of the case set aside the judgment of the trial Court and as such the judgment is liable to be set aside.

10. On the other hand, it is the plea of the respondent that the marriage was solemnized as per Hindu Rites and customs in a proper manner and it does not warrant any

interference.

11. The learned Principal Subordinate Judge, Virudhachalam, not satisfied with the stand of the respondent/wife and on being satisfied with the averment stated by the husband, allowed the case of the husband and declared the marriage as null and void.

12. Challenging the said judgment and decree passed by the Principal Subordinate court, Virudhachalam, the wife appealed to the learned Additional District Court/Fast Track Court No.II, Cuddalore, and by judgment dated 14.10.2006, the appellate Court has upheld the marriage that was solemnized between the appellant and the respondent.

13. Challenging the above said order, the husband has filed this appeal by raising the following substantial questions of law for consideration:

(a) Whether or not is necessary to mark the Statutory Certificate (Marriage Certificate Ex.P4) though the concerned issuing authority only?

(b) Whether or not a document marked and taken on file can be rejected even when there is no objection to the document at the time of marking?

(c) Whether or not the lower appellate Court is correct in totally rejecting the relief prayed for on the sole basis of the existence of first marriage without considering the plea of duress and co-ercion?

(d) Whether or not the approach of the first appellate Court in coming to a conclusion and thereafter analysing the materials on record is correct or not?.

14. The main contention of the learned counsel for the husband is that when he has produced Ex.P4, marriage registration certificate to the effect that there is already a valid marriage subsisting with one SasiKala, the Additional District Court/Fast Track Court No.II, Cuddalore, ought not to have upheld that the second marriage solemnized with the respondent herein as valid.

15. The next contention raised by the learned counsel for the appellant is that only due to coercion, the appellant had married the respondent and that marriage was also solemnized in the police station and therefore, such marriage solemnized under coercion is not valid.

16. The learned counsel for the respondent/wife, reiterated the reasons weighed by the appellate Court in holding that the marriage was valid and prayed for dismissal of this appeal.

learned counsel for the respondent. Since all the questions of law raised by the appellant are interconnected, they are dealt with together.

18. It is the case of the appellant/husband that the marriage between him and the respondent took place on 08.05.2002 when already the marriage between him and one Sasi Kala was subsisting. In support of the said stand, he relied on Ex.P4, which is the marriage registration certificate.

19. The said marriage itself is seriously disputed by the respondent and the same was also held to be true by the learned Appellate Court, wherein the Additional District Court/Fast Track Court No.II, Cuddalore, has categorically held that the first marriage has not been proved in accordance with law.

20. When the factum of marriage is disputed, evidence regarding performance of marriage according to Hindu Rites must be brought on record to show that there is a valid marriage. Mere production of marriage registration certificate Ex.P4 is not the proof of marriage in order to become a valid marriage. Ex.P4, at best, can prove the marriage was between the said parties i.e., husband and wife, it does not prove valid marriage. When the said marriage itself is disputed, the burden of proof lies on the party who is placing reliance on the said marriage registration certificate to prove that such marriage took place in accordance with law. In the case on hand, the appellant has failed to produce any evidence, in support of the said marriage, except Ex.P4. The appellant has not chosen to examine his parents, who would have definitely participated in the said wedding had it really been taken place.

21. Admittedly, the appellant failed to produce any iota of evidence both oral or documentary to prove that the said marriage between him and one Sasi Kala took place on 26.04.2002.

22. In view of the above said reasons, this Court does not find any reason to take a different view than the view taken by the learned Appellate Court holding that the first marriage dated 26.04.2002 is not valid and therefore, the marriage dated 08.05.2002 is valid.

23. The next issue which needs to be considered is as to whether there was coercion in performing the marriage between the appellant and the respondent.

24. It is the case of the appellant that the marriage took place before the parents and he was forced to marry the respondent. When a party is taking the plea of coercion, it is for him to prove that actually he was forced to marry the respondent. In the case on hand, no material has been placed

on record to prove that he was forced to marry the respondent herein. This Court in the absence of evidence either or oral documentary, cannot take the submission of the appellant as gospel truth.

25. Therefore, this Court is of the view that even the plea of coercion has not been proved by the appellant.

26. For the foregoing reasons, this Court does not find any merit in this appeal and the same is accordingly, dismissed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The learned Additional District Judge
(Fast Track Court No.III), Virudhachalam.

2.The Principal Subordinate Court,
Virudhachalam.

3.The Principal Subordinate court,
Cuddalore.

+1cc to Mr.V.Raghavachari, Advocate, S.R.No. 13379

+1cc to Mr.Saikrishnan, Advocate, S.R.No. 13904

C.M.S.A.No.33 of 2006

AD(CO)

GN(22/04/2021)

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